

Attorney Docket No. 03398.4 and 03398.5

## PATENT APPLICATION

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appeal Nos.: 2010-003182 and 2010-004933

Serial Nos.: 10/766,652 and 10/766,654

October 13, 2010

Mail Stop: Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

*Murnane*  
*10-14-10*  
*GAR*

REQUEST TO RESCHEDULE  
THE ORAL HEARINGS SCHEDULED FOR NOVEMBER 16, 2010

Chief Clerk of the Board:

Appellant respectfully requests that the Chief Clerk reschedule the oral hearings for Appeal Nos. 2010-003182 and 2010-004933 (collectively "the Oral Hearings" or "the Appealed Applications") from November 16, 2010 to a date after January 1, 2011.

If the Oral Hearings are conducted on November 16, 2010, they will conflict with Appellant's representatives', John Murnane and Alicia Russo, preparation for a prior scheduled patent infringement trial in the United States District Court in Philadelphia, Pennsylvania ("the Philadelphia Trial").

On or about November 22, 2010, John Murnane and Alicia Russo are scheduled to relocate from their New York offices to Philadelphia for several weeks to represent another client at the Philadelphia Trial. John Murnane is the lead attorney for that trial. Prior to their departure on or about November 22, 2010, significant preparations that are already underway are required. Examples of those preparations include: preparing for, taking and defending numerous

expert witness depositions from October 19<sup>th</sup> through November 5<sup>th</sup>, preparing and serving supplemental interrogatory responses on or about October 22<sup>nd</sup>, preparing and filing Pretrial Memoranda on or before November 12<sup>th</sup>, preparing and filing Motions in Limine on or before November 16, 2010, preparing and filing responses to opposing counsel's Motions in Limine on or before November 22, 2010, preparing and exchanging witness lists and exhibits with opposing counsel prior to trial, preparing for direct and cross-examination of witnesses prior to trial, and preparing witnesses prior to trial. Several of these deadlines have been set by Court Order.

Accordingly, Appellant's representatives face a significant burden of preparing for the Philadelphia Trial, and—at the same time—also preparing for and attending the Oral Hearings on November 16, 2010 in Alexandria, VA.

Even though the law firm of Appellant's representatives employs many patent attorneys in addition to John Murnane and Alicia Russo, Appellant believes that John Murnane and Alicia Russo are the best equipped to appear before the Board on behalf of Appellant because they drafted, filed and prosecuted the Appealed Applications. In addition, they have prosecuted numerous other applications for Appellant, and they are well versed in Appellant's inventions, products and operations. In short, John Murnane and Alicia Russo have directly handled the entire life of the Appealed Applications, and both possess unique knowledge that would be difficult, if not impossible, to impart to another attorney.

In view of the above, Appellant believes that a genuine docketing conflict exists between the Oral Hearings and the Philadelphia Trial. Since scheduling of the Oral Hearings occurred after the Philadelphia Trial's schedule was ordered by the Court, Appellant respectfully requests that the Chief Clerk reschedule the Oral Hearings to a date after January 1, 2011, at which time the Philadelphia Trial is expected to have concluded.

Appellant's undersigned attorneys may be reached in their New York office by telephone at (212) 218-2100.

Respectfully submitted,

/Alicia A. Russo/  
John D. Murnane  
Registration No. 29,836

Alicia A. Russo  
Registration No. 46,192

Attorneys for Appellant

FITZPATRICK, CELLA, HARPER & SCINTO  
1290 Avenue of the Americas  
New York, NY 10104-3800  
Telephone: 212/218-2100  
Facsimile: 212/218-2200

**FITZPATRICK, CELLA, HARPER & SCINTO**

1290 Avenue of the Americas  
New York, NY 10104-3800  
(212) 218-2100

Facsimile:(212) 218-2200

**FACSIMILE COVER SHEET**

---

**TO:** United States Patent & Trademark Office  
Board of Patent Appeals and Interferences  
BPAI Hearings

**ATTN:** Jodie Flakowicz

---

**FROM:** John Murnane/ Alicia A. Russo/ Sean Reilly

---

**RE:** Appeal Nos. 2010-003182 and 2010-004933  
Docket Nos. 03398.4 and 03398.5  
Application Nos. 10/766,652 and 10/766,654  
Notice of Hearings

---

**FAX NO.:** 571-273-0299

---

**DATE:** October 13, 2010                   **NO. OF PAGES:** 4  
*(including cover page)*

---

**TIME:**   **SENT BY:**

---

**MESSAGE**

**IF YOU DO NOT RECEIVE ALL THE PAGES  
PLEASE CALL 212-218-2100 AS SOON AS POSSIBLE.**

**Note:** We are transmitting from a Canon Model FAX-L770  
(compatible with any Group I, Group II or Group III machine).

THIS FACSIMILE MESSAGE AND ACCOMPANYING DOCUMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE INDICATED ABOVE. INFORMATION THAT IS PRIVILEGED OR OTHERWISE CONFIDENTIAL MAY BE CONTAINED THEREIN. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, REVIEW OR USE OF THIS MESSAGE, DOCUMENTS OR INFORMATION CONTAINED THEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE OR FACSIMILE AND MAIL THE ORIGINAL TO US AT THE ABOVE ADDRESS. THANK YOU.